

**To:** CN=David Croxton/OU=R10/O=USEPA/C=US@EPA;CN=Jennifer Wu/OU=R10/O=USEPA/C=US@EPA[]; N=Jennifer Wu/OU=R10/O=USEPA/C=US@EPA[]  
**Cc:** CN=Jayne Carlin/OU=R10/O=USEPA/C=US@EPA[]  
**From:** CN=David Powers/OU=R10/O=USEPA/C=US  
**Sent:** Wed 12/19/2012 4:03:31 PM  
**Subject:** Fw: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today  
[Croxton.David@epamail.epa.gov](mailto:Croxton.David@epamail.epa.gov)  
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I had a chance to talk with Allison before her briefing this a.m. She had already caught the issue with the ending of the second sentence and was going to suggest something similar to the ending I suggested,

## Ex. 5 - Deliberative

# Ex. 5 - Deliberative

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----- Forwarded by David Powers/R10/USEPA/US on 12/19/2012 07:30 AM -----

From: David Powers/R10/USEPA/US  
To: David Croxton/R10/USEPA/US@EPA, Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
Cc: Jennifer Wu/R10/USEPA/US@EPA  
Date: 12/19/2012 07:25 AM  
Subject: Re: Fw: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

Dave - the suggested location for placement of the scheduled completion of IR TMDLs is on target but the second sentence should end with something like "...reasonable timeline for completing IR TMDLs in all of the basins within OR's CMZ".....it shouldn't reference implementation and it shouldn't reference additional management measures.

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From: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
To: David Croxton/R10/USEPA/US@EPA  
Cc: Jennifer Wu/R10/USEPA/US@EPA, David Powers/R10/USEPA/US@EPA  
Date: 12/18/2012 06:33 PM  
Subject: Re: Fw: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

THanks guys. **Ex. 6 - Personal Privacy** I think I should be able to add something along the lines of Dave C.'s suggestion for the schedule. Will insert that and Dave C's additional edits into the final first thing tomorrow before our briefing at 10:30 am ET (so hopefully no more changes ;)). I don't think my mngt should have a lot of edits at this point since its been reviewed so thoroughly but I'll let you know if they want to make any more tweaks.

Allison

On Tue, Dec 18, 2012 at 9:19 PM, <Croxton.David@epamail.epa.gov> wrote:  
Allison, Some more considerations from us for the letter---agghh!.

1) The attachment is a tracked version of the letter that includes some minor edits to the letter from me in cyan. I think they are

legitimate edits, but I'll defer to you on whether you include them. The edits in red are from the earlier mark-up from Jayne.

(See attached file: OR CZARA Initial Assessment Cvr Ltr Final 12-18-12 Tracked.docx)

2) Then there is the matter of including a positive statement about ODEQ's proposed schedule for future TMDLs. There are two options for including such a statement. Again, I am comfortable deferring to you on whether either or any of these options are included in the Final letter. My preference is to include such a statement if we can do so easily and appropriately; otherwise forget about it. Powers provides one option in his attached message. I did not think his placement works because the sentence is describing examples of ODEQ's intentions and we are trying to give them credit for something they completed. My option for including such a statement is to add two sentences to the end of the 4th paragraph:

Without draft IR-TMDLs, examples of safe harbor BMPs, or further detail on how the IR-TMDLs would address landslide prone areas and road management concerns, the EPA and NOAA do not have the information to support a determination regarding whether the IR-TMDL approach would: (1) enable Oregon to achieve and maintain applicable water quality standards, and (2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. In order to evaluate whether Oregon has satisfied the condition for additional management measures for forestry, the EPA and NOAA request that the ODEQ accelerate its efforts to provide the following information as quickly as possible:

- Additional detail on how the ODEQ plans to determine the adequacy of the BMPs identified in the IR-TMDL process for meeting WQSSs;
- Additional detail on the strategy the State plans to take to address landslide prone areas and forest roads;
- Examples of the safe-harbor BMPs Oregon would use to address:
  - o protection of riparian areas, including for Type-N streams;
  - o protection of landslide-prone areas; and
  - o management/maintenance of forest roads; and
- Mid-Coast IR-TMDLs, including load allocations and surrogate targets.

As required by the Settlement Agreement, the ODEQ proposed a schedule for developing IR-TMDLs for all Coastal subbasins. EPA and NOAA conclude that this proposed schedule provides a reasonable timeline for implementing the State's additional management measures for forestry.

3) Beware that when I attempted to create a final, untracked version of the letter, the font for this 4th paragraph kept changing from the tracked version so that it was inconsistent with the rest of the letter's font. Hopefully you won't have the same problem or know how to correct it better than I.

4) And lastly, sorry for the last minute adjustments and thanks for finalizing.

Dave

----- Forwarded by David Croxton/R10/USEPA/US on 12/18/2012 05:46 PM -----

From: David Powers/R10/USEPA/US  
 To: Jennifer Wu/R10/USEPA/US@EPA, allison.castellan@noaa.gov,  
 Cc: David Croxton/R10/USEPA/US@EPA  
 Date: 12/18/2012 05:21 PM  
 Subject: Re: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

I think a single sentence on DEQ's commitment to complete IR TMDLs throughout the CMZ or area covered by the CNPCP would suffice (Allison would know the correct CMZ language). Below are the two paragraphs from the letter where such a sentence logically fits. I've inserted sample language where I think it fits in italics for others to edit.

The EPA and NOAA negotiated the settlement agreement based in part on the commitments that the ODEQ had made in its July 21, 2010, and July 26, 2010, letters responding to the EPA and NOAA's May 12, 2010, letter. In these letters, the ODEQ

explained its continuing progress and deliberate intention to complete the Mid-Coast IR-TMDLs, which would have included specific safe-harbor BMPs, by June 30, 2012. The ODEQ also stated its intention to meeting other interim milestones, including providing examples of the safe-harbor BMPs, and additional detail on how the IR-TMDLs would address landslide prone areas and road management concerns, and has proposed completing IR TMDLs in all of Oregon's coastal management zone basins by 2021. As you know, the ODEQ did not complete the Mid-Coast IR-TMDLs by June 30, 2012 and did not provide examples of safe-harbor BMPs or details about how the IR-TMDLs would address landslide prone areas or road management concerns. Instead, the ODEQ notified the EPA and NOAA that the Mid-Coast IR-TMDLs will not be completed until June 30, 2013, or later.

The EPA and NOAA recognize the complexities that Oregon faces in pursuing this new IR-TMDL approach and the extensive effort expended by the ODEQ's staff and management toward ensuring its success. For example, the ODEQ has held numerous stakeholder advisory and technical workgroup meetings and has

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Jennifer Wu---12/18/2012 03:14:51 PM---I think we can still add those to the letter. Our Office Director is looking for positive things to

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To: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
Cc: David Powers/R10/USEPA/US@EPA, David Croxton/R10/USEPA/US@EPA  
Date: 12/18/2012 03:14 PM  
Subject: Re: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

I think we can still add those to the letter. Our Office Director is looking for positive things to add to the letter, so this would be one.

I'll let Dave C know about these additions to the letter. Could you come up with the language? Otherwise, I'll give it a shot. I imagine 1-2 sentences. Unfortunately, **Ex. 6 - Personal Privacy** so please feel free to send directly to Dave C, and I'll be working on this later today. I left Dave C a message about this, too.

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<http://www.epa.gov/r10earth/tmdl.htm>

-----Allison Castellan - NOAA Federal <allison.castellan@noaa.gov> wrote: -----  
To: David Powers/R10/USEPA/US@EPA  
From: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
Date: 12/18/2012 02:57PM  
Cc: Jennifer Wu/R10/USEPA/US@EPA  
Subject: Re: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

Dave--

You bring up a very good point. Our letter perhaps should speak to the timeline and the fact that we found it acceptable although

I'm not sure its the end of the world if we don't include. Since Dan's already reviewed, is it too late to change? Jenny, what are your thoughts?

Allison

On Tue, Dec 18, 2012 at 5:23 PM, <Powers.David@epamail.epa.gov> wrote:

Jenny and Allison - I'm good to go with the latest version of the letter but wanted to double back to you to make sure we've addressed the full scope of provision 5(b) of the settlement agreement and what the State has provided to EPA. We make it clear that there is significant work to be done in the IR/TMDL & management measure/BMP areas...does our letter need to acknowledge OR's proposed schedule for developing IR TMDLs for all the Coastal subbasins listed below by 2021? Provisions 3 and 5 have some overlap. I don't think its absolutely necessary but wanted you two to at least think about it since the red pen rests with you and since we've indicated to DEQ we are fine with the schedule DEQ provided for completing IR TMDLs in the CZM. I also talked to Nina after she rec'd the proposed schedule below. While she would rather have seen a specific date for each sub-basin, she recognized the timing uncertainty that far out and didn't think it was that big of a deal since they've agreed to completing IR TMDLs in CZM basins beyond the Mid-Coast. I don't remember references in our cover letter or enclosure to DEQ's commitment and timeline. Now, if DEQ could just get the first IR TMDL done.... If this is off base of too complicated at this point I understand. You have the info you need here should you decide to add something. You don't need to get back to me.

Final Settlement Agreement:

3. In their review of ODEQ's proposed schedule for implementing the Oregon Coastal TMDL Approach throughout Oregon's CNPCP management area, EPA and NOAA will consider Advocates' comments on ODEQ's proposed schedule. EPA and NOAA shall review ODEQ's proposed schedule to ensure that it provides a reasonable timeline for implementing the State's additional management measures for forestry and that it includes developing or updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach.

5. By December 31, 2012, pursuant to their authorities under 16 U.S.C. § 1455b(d), and based upon Oregon's July 2, 2010, Attorney General's Opinion, the July 26, 2010, ODEQ commitment letter, the schedule for implementing the Oregon Coastal TMDL approach that EPA and NOAA requested the state submit by March 31, 2011, the Mid-Coast Basin TMDLs implementing the Oregon Coastal TMDL Approach that EPA and NOAA requested the state to submit by June 30, 2012, and any other information, EPA and NOAA shall provide ODEQ with a written initial assessment. This written initial assessment will evaluate (a) whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins, including the safe harbor BMPs, is likely to result in actions that achieve and maintain water quality standards, and (b) whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition on Oregon's CNPCP under 16 U.S.C. § 1455b(b)(3). In developing their initial assessment, EPA and NOAA shall consider any comments Plaintiff may have submitted with respect to ODEQ's proposed TMDLs and BMPs. EPA and NOAA shall send a copy of the written initial assessment to Plaintiff.

From: FOSTER Eugene P [mailto:FOSTER.Eugene@deq.state.or.us]

Sent: Friday, July 15, 2011 9:28 AM

To: 'nbell@advocates-nwea.org'

Cc: MULLANE Neil; YON Donald R; FOSTER Eugene P; 'Carlin.Jayne@epamail.epa.gov'; 'Powers; Dave (powers.david@epa.gov)'

Subject: RE: document request

as requested,

A link to the TMDL IMD

<http://www.deq.state.or.us/wq/standards/docs/toxics/humanhealth/rulemaking/TMDLIMD.pdf>

And the schedule for IR-TMDL development in the CZMA:

Mid-Coast: IR-TMDL completed June 2012 (more likely completion by Sept. 2013)

Coos: IR-TMDL

Rogue: IR-TMDL

Umpqua IR-TMDL

Sixes and Chetco: IR-TMDL  
 Coquille: IR-TMDL  
 North Coast IR-TMDL  
 2021 IR-TMDLs completed in the CZM

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Jennifer Wu---12/18/2012 12:25:59 PM---Hi Allison, I just talked with Dave Croxton, and it looks like our Office Director will have some ch

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 To: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
 Cc: David Croxton/R10/USEPA/US@EPA, David Powers/R10/USEPA/US@EPA  
 Date: 12/18/2012 12:25 PM  
 Subject: FYI: minor changes expected in CZARA letter, so will send last copy to you COB today

Hi Allison, I just talked with Dave Croxton, and it looks like our Office Director will have some changes to the letter. I expect that they will be minor changes regarding tone, but they'll be changes nevertheless. So look in your email for the latest copy tomorrow morning which we'll send COB today. I noticed in the most recent copy of the letter Jayne sent yesterday, there are different fonts, so I'll also make those changes in the next letter.

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-----Allison Castellan - NOAA Federal <allison.castellan@noaa.gov> wrote: -----  
 To: Jennifer Wu/R10/USEPA/US@EPA  
 From: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>  
 Date: 12/18/2012 10:17AM  
 Cc: David Powers/R10/USEPA/US@EPA, David Croxton/R10/USEPA/US@EPA  
 Subject: Re: NOAA briefing on OR CZARA initial assessment letter delayed until tomorrow a.m.

Thanks Jenny. My briefing ended up getting pushed back until tomorrow morning so I'll pdf a copy of the signed letter as soon as I get it and will put a hard copy in the mail as well.

On Tue, Dec 18, 2012 at 1:05 PM, <Wu.Jennifer@epamail.epa.gov> wrote:  
 Hi Dave P and Allison - that sounds good. Dave C and I are covering for Jayne while she's on vacation to get the letter through our chain, so feel free to send us the pdf of the letter signed by NOAA, then we will wrap everything else up here, getting signatures and sending out the final letter to everyone. Dave C and I are Ex. 6 - Personal Privacy so hopefully, we'll have the letter out by the end of the this week. If there are any problems, feel free to let us know, and we'll make arrangements.

Thanks,  
 Jenny Wu

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-----David Powers/R10/USEPA/US wrote: -----

To: Christine Psyk/R10/USEPA/US@EPA, Dan Opalski/R10/USEPA/US@EPA

From: David Powers/R10/USEPA/US

Date: 12/18/2012 08:04AM

Cc: Jennifer Wu/R10/USEPA/US@EPA, David Croxton/R10/USEPA/US@EPA, Jayne Carlin/R10/USEPA/US@EPA

Subject: NOAA briefing on OR CZARA initial assessment letter delayed until tomorrow a.m.

The NOAA briefing on the OR CZARA initial assessment letter is delayed until 10:00am tomorrow. Allison Castellan, NOAA's CZARA programs lead, will let EPA know how their briefing goes. I gave Allison a download on our briefing. I let her know about the importance of EPA letting some of the key players know that the initial assessment letter was coming...and that we would be developing a brief desk statement to help ensure we send a consistent message on inquiries.

## Ex. 5 - Deliberative

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